

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

KEIR MCQUISTAN,)	Case No. 1:20-CV-00656
)	
Petitioner,)	JUDGE DAVID A. RUIZ
)	
v.)	OPINION AND ORDER
)	
ED SHELDON, WARDEN,)	
)	
Respondent.)	

Before the Court is a Report and Recommendation from Magistrate Judge Darrell A. Clay recommending that the petition of Keir McQuistan for a writ of habeas corpus under 24 U.S.C. 2254 be dismissed because the claims are either procedurally defaulted or non-cognizable. R. 15. The Report and Recommendation further advised the Petitioner that any objections must be filed by February 24, 2023. *Id.* Petitioner has filed no objections to the Report and Recommendation.

The United States Supreme Court held in *Thomas v. Arn*, 474 U.S. 140, 150 (1985) that: “It does not appear that Congress intended to require district court review of a magistrate judge’s factual or legal conclusions, under de novo or any other standard, when neither party objects to those findings.” To that point the Sixth Circuit has held that “the failure to file specific objections to a magistrate judge’s report constitutes a waiver of those objections.” *Cowherd v. Million*, 380 F.3d 909, 912 (6th Cir. 2004). More recently, the Sixth Circuit has indicated failure to object constitutes a forfeiture. *Berkshire v. Beauvais*, 928 F.3d 520, 530 (6th Cir. 2019) (“We clarify that forfeiture, rather than waiver, is the relevant term here.”).

Here, as noted, Petitioner has not filed any objections to the magistrate judge's Report and Recommendation, and the fourteen day period for filing objections under Fed.R.Civ.P. 72(b)(2) and 28 U.S.C. § 636(b)(1) has expired. Although "exceptional circumstances may warrant departure from the waiver rule in the interest of justice," *Engle v. Ohio Dept. of Rehabilitations and Corrections*, 59 Fed. Appx. 763, 764 (6th Cir. 2003) (internal citation omitted), no such exceptional circumstances exist here.

Moreover, a review of the Report and Recommendation discloses no clear error in either its factual findings or legal conclusions.

Accordingly, for the reasons stated, the Report and Recommendation is ADOPTED and the petition for a writ of habeas corpus is DISMISSED. Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith and that there is no basis on which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

IT IS SO ORDERED.

Date: March 24, 2023

/s/ David A. Ruiz

David A. Ruiz

United States District Judge